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precedent is beyond the power of the court to alter, and practically becomes statute law. If this be true, the same principle must apply in civil cases. Hence it follows that as the whole statute law of this State, civil and criminal, was revised by the Code of 1887, every previous decision of the appellate court, good, bad and indifferent, not altered by the Code, was thereupon placed beyond the power of the court to overrule or qualify, and became, substantially, statute law.

This is the logical result of the decision in the principal case, but it is scarcely necessary to point out that the court has many times overruled precedents established by the same tribunal before the adoption of the Code, and not altered in the general revisal.

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CORE V. CITY OF NORFOLK.\*

*Supreme Court of Appeals: At Richmond.*

February 7, 1901.

1. CONDEMNATION PROCEEDINGS—*Effort to purchase—Condition precedent.* A city council has no power to institute, and the courts no jurisdiction to entertain, any proceeding to condemn lands wanted for the purposes of the city, until after the council has made an unsuccessful attempt to purchase them from the owner. This is in the nature of a condition precedent, and compliance therewith must affirmatively appear in the proceedings.
2. CONDEMNATION PROCEEDINGS—*Effort to purchase—Preliminary correspondence.* Before instituting condemnation proceedings, it is the duty of a city council, after it has been determined to open or extend a street, to make a *bona fide* effort to agree with the owner of lands needed for the street for the land wanted. Preliminary correspondence to ascertain the price of the land, before it has been determined to open or extend the street, is not a sufficient compliance with sec. 1074 of the Code.

Error to a judgment rendered by the Corporation Court of the city of Norfolk, in a condemnation proceeding, wherein the defendant in error was the plaintiff, and the plaintiff in error was the defendant.

*Reversed.*

The opinion states the case.

*Walke & Old*, for the plaintiff in error.

*Walter H. Taylor*, for the defendant in error.

BUCHANAN, J., delivered the opinion of the court.

These proceedings were instituted under chapter 46 of the Code by the Common and Select Councils of the city of Norfolk for the purpose of condemning certain lands of the plaintiff in error for its uses as a street.

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\* Reported by M. P. Burks, State Reporter.

By section 1074 of that chapter it is provided that "if . . . the council of a city . . . cannot agree on the terms of purchase with those entitled to lands wanted" for its purposes, it may institute condemnation proceedings in the proper courts.

Under the provisions of that section, the councils of the city of Norfolk had no authority to institute, and the court had no jurisdiction to entertain, any proceeding to condemn the lands wanted, until after the councils had made an attempt to purchase them from the plaintiff in error, and the parties had been unable to agree upon terms of purchase. This is conceded by counsel for the defendant in error, but if it were not, it is well settled that such provisions are regarded as in the nature of conditions precedent, which are not only to be observed and complied with before the courts can exercise their compulsory powers to deprive the owner of his land, but the party instituting such proceedings must show affirmatively such compliance. *Cooley on Con. Lim.* (6th ed.), 648-9; *Lewis on Eminent Domain*, sec. 301; *Mills on Eminent Domain*, sec. 105. See *Charlottesville v. Maury*, 96 Va. 383, 386; *Painter v. St. Clair*, 98 Va.; 2 Va. Sup. Ct. Rep. 115.

The plaintiff in error, in the inception of the proceedings, denied that the councils of the city had made any *bona fide* effort to agree upon the terms of purchase for his lands, and objected to the appointment of commissioners, but the court, after hearing evidence, overruled his objection. This action of the court is assigned as error.

It appears that, at a meeting of the councils some days prior to the 4th of March, 1899, the following resolution was passed:

"Whereas, it *may be deemed expedient* by the councils of the city of Norfolk to open and extend Tripoli street from the northern side of Wolf street to the southern side of Freemason street, between Brewer and Granby streets, as shown on a map drawn by W. E. Brooke, city engineer; and,

"Whereas, the councils are desirous of knowing at what price so much of the real estate in said city, as is not offered by the owners thereof to be donated, may be obtained which will be necessary to extend, lay out and open said street, in order that they may determine whether to acquire the same by purchase or by condemnation; *if either be expedient*: therefore be it

"*Resolved*, by the Common and Select Councils of the city of Norfolk, That the Board of Street, Sewer and Drain Commissioners are hereby instructed to find out who are the owners of the said property necessary to extend Tripoli street, as shown on said map, from the northern side of Wolf street to the southern side of Freemason street, between Brewer and Granby streets, and that they confer with such owners in regard to the city obtaining the necessary property either by purchase or donation.

"And that the said board are directed to report to the councils as soon as con-

venient who are the owners of such property, and at what price it, or any portion thereof, may be obtained."

Pursuant to that resolution, the Board of Street, Sewer and Drain Commissioners made the inquiries directed, and reported the result to the councils of the city. After securing that information the councils passed the following resolution:

"Whereas, it is deemed expedient by the councils of the city of Norfolk to open Tripoli street sixty feet wide from Wolf street to Bute street, as shown on a map in the city engineer's office, called 'Plan of proposed extension of Tripoli street'; and

"Whereas, the councils of the city of Norfolk cannot agree on the terms of purchase with those entitled to the land necessary to so open Tripoli street as aforesaid, except with Dr. Livius Lankford, R. A. Dodson and C. M. Ferguson, for the lands owned by them, respectively: therefore be it

"Resolved, by the Common and Select Councils of the city of Norfolk (a majority of the members elected to each council concurring), That the city of Norfolk, for the purpose of so opening Tripoli street as aforesaid, do proceed at once to institute condemnation proceedings for all the property described, as follows."

After the councils had decided that it was expedient to open and extend Tripoli street, and had determined to acquire the lands wanted for that purpose, no effort was made to purchase the lands of the plaintiff in error.

The correspondence between the Board of Street, Sewer and Drain Commissioners and the plaintiff in error, under the "resolution of expediency," is relied on to show that the councils had made an effort to purchase the lands of the plaintiffs in error, and that they could not agree upon the terms of purchase. But that is clearly insufficient to show a compliance with the statute. At that time the councils had neither the right nor the desire to acquire the lands, for they had not yet determined to open and extend the street. The object of that correspondence was not to agree upon terms of purchase, but to get information as to the probable costs of opening and extending the street, so as to enable the councils to pass upon the expediency of making the improvement. It was the duty of the councils, after determining to open and extend the street, to make a *bona fide* effort to agree upon terms of purchase with the plaintiff in error for the lands wanted. Having failed to do this, the Corporation Court was without jurisdiction, and should have sustained the objection of the plaintiff in error to the appointment of commissioners, and dismissed the proceedings.

The judgment complained of must be reversed, and the proceedings be set aside, and this court will enter such order of dismissal as the Corporation Court ought to have entered.

*Reversed.*

NOTE.—The single point decided in this case has, we think, long been anticipated in the practice in condemnation proceedings in this State—that is, that before such proceedings can be instituted, effort must first have been made, without success, to agree upon terms with the land-owner. A case came under the writer's observation some years ago, where a "boom" land company needed a certain small parcel of land upon which to rest an abutment for a viaduct by which intending purchasers were to reach the phenomenally valuable lots held for sale by the company. The owner—a shrewd son of Erin, who "knew the law," and who knew further that the land company's boom could not brook delay,—transferred the *locus in quo* to his daughter, and generously sent the latter for a trip to the "Ould Country," where she would be beyond the reach of early propositions of purchase. The effect was the balking of condemnation proceedings, with the result that Pat named his own terms—terms which even in boom days of 1890 might fairly be called somewhat high.

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FIRST NATIONAL BANK OF ROANOKE V. TERRY'S ADM'R.\*

*Supreme Court of Appeals: At Richmond.*

February 7, 1901.

1. INSURANCE—*Insurable interest—Debtor and creditor—Limit of recovery.* A creditor may insure the life of his debtor, or may acquire, by assignment, a policy on his life after it has been issued to the debtor. The interest of the creditor in the policy, however, will be limited to the amount of the debt at the time of the death of the assured, together with such premiums as the creditor has paid to preserve the policy, with interest thereon.
2. LIFE INSURANCE—*Assignment by debtor to creditor—Terms of assignment—Limit of recovery.* It is immaterial whether the assignment of a life policy by a debtor to his creditor is absolute and unconditional, or is collateral for the amount of the debt. In either case, equity will regard the assignment as only a collateral security.
3. EVIDENCE—*Corporation as party to contract—Death of other party—Competency of agent of corporation.* Bank directors are competent witnesses to testify in behalf of the bank in an action by the bank against a third person, although they were the agents of the bank who negotiated the transaction in suit with the third party, and the latter is dead.

Appeal from a decree pronounced by the Circuit Court of the city of Roanoke, in a suit in Chancery, wherein the appellee was the complainant, and the appellant was the defendant. *Reversed.*

The opinion states the case.

*Thomas W. Miller*, for the appellant.

*Scott & Staples*, for the appellee.

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\*Reported by M. P. Burks, State Reporter.